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New Mexico and Arizona.

SPEECH

OF

HON. JOHN H. STEPHENS,

OF TEXAS,

IN THE HOUSE OF REPRESENTATIVES,

Saturday, August 19, 1911,

On the joint resolution (S. J. Res. 57) approving the constitutions formed by the constitutional conventions of the Territories of New Mexico and Arizona.

Mr. STEPHENS of Texas said:

Mr. SPEAKER: A deeper question than the recall of Federal judges is involved in this veto message of the President. That question is this: Shall the people of Arizona be permitted to write their own constitution? If they are not patriotic or intelligent enough to write it, they should be denied statehood. If, on the other hand, they do write one, they should be permitted to do so without Executive coercion. What right has the Executive head of this Government to hold in terrorem a whole people by forcing them to bow to his own sweet will and adopt his individual ideas of the judiciary? They have, in effect, been told by this veto message that if they refuse to obey his despotic will and yield up the right to recall from the bench an unjust judge that they shall remain under the present form of territorial carpet-bag government. I am opposed to continuing in office Federal judges who are not even citizens of the State in many cases, and their past acts prove that they have nothing in common or any sympathy with the people of Arizona; their rulings are too often dictated and controlled by corporate greed. Judicial tyranny is well known to be the result of and cloak to incompetency, and is always the worst possible form of tyranny; and we must remember that for more than 50 years the people of Arizona have been deprived of the right to select their own judges from their own citizenship, and the arbitrary acts and rulings of an alien appointive judiciary to the Territorial bench has resulted in a constitutional enactment which would have enabled the people to recall bad judges. Why should the President veto the right of these people to write their constitution?

Mr. Speaker, in my judgment the people of Arizona, if any excuse or justification was needed, have ample justification for writing into their constitution the power of the people to recall their judges, because it is a well-recognized fact that the Territorial Federal judges are too often politicians and not lawyers in the true sense of the word. Too often they are taken from the political lame-duck pond and appointed to office to pay a real or fancied or promised political debt. Being in many instances imported from the States they can very readily harass and very often do lord it over a helpless people. Mr. Speaker, I believe that the Federal judiciary should be elected from top to bottom, giving them short terms of office, so as to make them servants and not the masters of the people. Nearly all of the State constitutions require all State judges, including the judges of their supreme courts, to be elected by the people. This is almost the universal rule, and why should not the Federal judges be likewise elected by the people and from the districts they serve? The Supreme Court judges should also be elected from nine separate districts created by Congress.

It is my hope, belief, and judgment that if any Democrat in this or the other end of the Capitol should so far forget his duty to his country and his party as to vote against the admission of Arizona because of its constitution, that such person will never again be elected to misrepresent the people who sent him here. Mr. Speaker, I desire to call attention to the recall of judges provided for in the present constitution of Texas, adopted in 1876, and as provided for in article 15, section 6. It is as follows, viz:

REMOVAL OF DISTRICT JUDGES.

Any judge of the district courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the supreme court. The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less than 10 lawyers, practicing in the courts held by such judge and licensed to practice in the supreme court, said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths to the facts of creditable witnesses.

The supreme court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

No judge has ever been tried in Texas under this provision of our constitution. The reason is to be found in the fact that our judges are elected by the people for comparatively short terms, and they dare not become unjust in their rulings or tyrannical bigots on the bench, as many Federal judges, holding their office by appointment for life, have become. This class of men, not elected by the people but appointed for life, are set up on a pedestal of supposed infallibility and self-righteousness so far above the heads of the common people that they in course of time become their arrogant masters, and they very often render judgments that put property and corporate rights far above individual or human rights. These potent facts have induced the citizens of Arizona in self-defense to write the recall of judges in their new constitution. Who will find fault with them for their just and well-founded fear of judicial oppression? I will not, I am sure. Are not judges called from the members of the bar? Since when has the discovery been made that lawyers are any better—morally, intellectually, or otherwise—than the common herd of mankind? They are no better and no worse; and when one of them is appointed to a Federal judgeship, does this distinction renovate and convert the old Adam found in most mortals and thus wholly change the moral or mental equipment of the man? In nearly every instance coming under my observation Federal judges, from the lowest to the highest, as well as our Cabinet officers and presidential advisers, are selected by the corporate and money-controlled interests of the country, and in almost every instance they have been the attorney for these interests, and it is well known that they too often remain their tools on the bench and in the Cabinet.

Mr. Speaker, our Republican stand-pat friends objected to the recall of the judges provided for in the Arizona constitution when this bill passed this House recently, and they refused to vote for that constitution for this alleged reason. I firmly believed then, and believe now, that their reason—and the only one—for their opposition was the fear that Arizona would send two Democratic Senators to the United States Senate, and that their reason for voting in favor of New Mexico was that it would elect two Republican Senators. Yet when this bill passed this Democratic body and went to the other end of this Capitol for consideration in a Republican body I believed that it would pass that body also and become a law. I did not expect to see a President elected by all the people of this Union refuse to approve the Flood resolution, thus admitting the two States into the Union, but I was sadly mistaken. The Delegate from Arizona and the Republican leader on this floor assured us in advance that he would veto the Flood resolution, and he did. Now, let him and his party take the consequences of their refusal to let the people of a proposed State write their own constitution without dictation or Executive coercion.

The Republican Party in its platform, and its orators in the campaign of 1860, denounced the Supreme Court of the United States for rendering the famous Dred Scott decision in the most drastic language, thus proving that Lincoln and other founders of the Republican Party, in their earlier and better days, refused to deify Federal judges or to worship at the shrine of their supposed judicial infallibility. This was before the Federal courts had become the self-appointed guardians of the corporate wealth of the country. The judges of these courts are constantly reversing the decisions of other judges and courts, and sometimes they reverse their own decisions, thus admitting that judges are but ordinary human beings and subject to commit errors. The most drastic, forceful, and truthful language is sometimes used by judges of the Supreme Court of the United States in criticizing the decisions of that court, which court is the highest court on earth, and its members bitterly and often criticize its rulings. If they can do so with impunity, is it treason for the common people to do the same thing? In any event I shall reserve for myself, and for the veto-oppressed people of Arizona, the right to find fault with, criticize, and point out the faults and errors of Federal judges, and, standing with the people of Arizona, I shall insist on their right to recall any unfaithful servant, be he a deified judge or the humblest servant of the people.

Mr. Speaker, I am certain that I shall be unmercifully criticized by the apologist for the trust and all those persons who are always seeking favors from corporate wealth, for criticizing the Federal courts as I have done in this speech. Mr. Speaker, I criticize these courts because, in my judgment, they have done more to build up the trust and to permit great aggregations of wealthy individuals and corporations to combine and exploit the whole people than all other influences combined. On the other hand, they have often issued unjust injunctions against labor organizations at the instance of corporations. I do not stand alone in my criticisms of these courts, because we find that Justice Harlan, in his dissenting opinion in the

Income-tax cases, says on the bottom of page 685, volume 158, also dissenting in said cases, on page 695, says:

The practical effect of the decision to-day is to give to certain kinds of property a position of favoritism and advantage inconsistent with the fundamental principles of our social organization, and to invest them with power and influence that may be perilous to that portion of the American people upon whom rests the larger part of the burdens of the Government, and who ought not to be subjected to the dominion of aggregated wealth any more than the property of the country should be at the mercy of the lawless.

Also Justice White—now Chief Justice of the Supreme Court—also dissenting in said case, on page 695, says:

It is difficult to overestimate the importance of these cases. I certainly can not overstate the regret I feel at the dispositon made of them by the court. It is never a light thing to set aside the deliberate will of the legislature, and, in my opinion, it should never be done except upon the clearest proof of its conflict with the fundamental law. Respect for the Constitution will not be inspired by a narrow and technical construction which shall limit or impair the necessary powers of Congress. Did the reversal of these cases involve merely the striking down of the inequitable features of the law, or even the whole law, for its want of uniformity, the consequences would be less serious; but as it implies a declaration that every income tax must be laid according to the rule of apportionment, the decision involves nothing less than a surrender of the taxing power to the moneyed class. By resuscitating an argument that was exploded in the Hylton case, and has lain practically dormant for a hundred years, it is made to do duty in nullifying not this law alone, but every similar law that is not based upon an impossible theory of apportionment. Even the specter of socialism is conjured up to frighten Congress from laying taxes upon the people in proportion to their ability to pay them. It is certainly a strange commentary upon the Constitution of the United States and upon a democratic Government that Congress has no power to lay a tax which is one of the main sources of revenue of nearly every civilized State. It is a confession of feebleness in which I find myself wholly unable to join.

While I have no doubt that Congress will find some means of surmounting the present crisis, my fear is that in some moment of national peril this decision will rise up to frustrate its will and paralyze its arm. I hope it may not prove the first step toward the submergence of the liberties of the people in a sordid despotism of wealth.

As I can not escape the conviction that the decision of the court in this great case is fraught with immeasurable danger to the future of the country, and that it approaches the proportions of a national calamity, I feel it a duty to enter my protest against it.

When these great judges speak out in such ringing tones against the manifest tendency of the highest Federal tribunal to (using their own language) "become subjected to the dominion of aggregated wealth," what may me expect of the decisions of the lower Federal courts, whose judges are much more liable to be subjected to the dominion of aggregated wealth (if I may be permitted to use the language of Justice Harlan in the income-tax case quoted above)? Mr. Speaker, we find that the same great judge, in a very recently decided case, known as the Standard Oil case, again criticizes this great court in his dissenting opinion. The Washington Herald, discussing that opinion the next morning after its rendition, makes the following statement:

JUSTICE HARLAN.

Peculiar interest is given to the dissenting opinion of Justice Harlan, of the United States Supreme Court, in the Standard Oil case by the worded similarity between the views of the justice and of President Taft with respect to "good" and "bad" trusts, and the writing into the statute of the word "unreasonable," as modifying the prohibition with respect to interstate trade.

The transcript of the stenographic notes of Justice Harlan's oral delivery in dissent became available last night. He said, in part:

"The antitrust act of 1890 was passed at a time when this country was in a state of great unrest, arising out of an enormous aggregation of capital in a few hands and arising out of combinations which had their hands upon the throat of this country in respect even to the necessities of life, and Congress had before it the great question as to how these evils were to be remedied so far as Congress had the power to remedy them. The question was, 'What shall we do?'

"They finally, after great debate by able statesmen, passed the antitrust act of 1890. Let me direct attention to a few of the words of that act. It provides, in section 1:

"QUOTES PART OF ACT.

"'That every contract, combination in form of trust or otherwise, or conspiracy' * * *

"Not in restraint of trade, as the learned Chief Justice said in one part of his remarks, but—

"'* * * in restraint of trade among the several States and with foreign nations, is hereby declared to be illegal.'

"Congress has nothing to do with domestic trade in the States, but as to interstate trade it has a great deal to do, and therefore it fell upon this policy.

"The men who were in the Congress of the United States at that time knew what the common law was about the restraint of trade.

"They knew what restraints of trade at common law were lawful and what were unlawful. But Congress said:

"'The surest way to protect interstate commerce is not to start upon any distinctions at all as to the kinds of trade, not "every" contract in restraint of trade among the States is hereby declared to be illegal.'

"MONOPOLY QUESTION ARISES.

"Then, in the second section—

"'Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize'—

"Monopolize what?—

"'any part of interstate trade or commerce shall be liable to the penalties prescribed by this act.'

"What becomes, then, of the statement that this act did not condemn monopoly in itself? Did not these men know what a monopoly was? And when Congress said that we will punish any man that monopolizes or attempts to monopolize any part of interstate commerce, did it not know what it intended? That is not all:

"'Every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce among the States, is hereby declared illegal.'

"Therefore Congress said to all the people of this country:

"'We are not going to bother the courts or ourselves with any inquiries as to what contracts are in restraint of trade, reasonably or unreasonably. We are not going to leave that to any jury. We are not going to leave that to any circuit judge. We will determine it as a part of the policy of the United States that, so far as interstate trade is concerned, no body or corporation shall make or attempt to enforce a contract, any contract, that in any degree restrains interstate trade.'

"MEANING CLEARLY SET FORTH.

"Can anybody doubt the meaning of those words? If you say 2 and 2 make 4, you would not make it any plainer than those words make out the intention of Congress.

"It is now, with much amplification of argument, urged that this statute in declaring illegal every combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, does not mean what the language used therein plainly imports, but that it means only to declare illegal any such contract which is unreasonable restraint of trade, while leaving all others unaffected by the provisions of the act; that the common law—we hear a good deal about that in this opinion—that the common-law meaning of the term 'contract in restraint of trade' includes only such contracts as are in unreasonable restraint of trade, and where that term is used in the Federal statute it is not intended to include all contracts in restraint, but only those which are in unreasonable restraint thereof.

"TENDENCY OF THE RICH.

"In the now not very short life that I have passed in this capital and the public service of the court, the most alarming tendency of this day, in my judgment, so far as the safety and integrity of our institutions are concerned, is the tendency to judicial legislation, so that when men having vast interests are concerned, and they can not get the lawmaking power of the country which controls it to pass the legislation they desire, the next thing they do is to raise the question in some case to get the court to so construe the Constitution or the statues as to mean what they want it to mean. That has not been our practice.

"Prosecutions have been instituted and I suppose men have been convicted and sent to jail under the antitrust act upon the construction that this court has given to it.

"The court, in the opinion in this case, says that this act of Congress means and embraces only unreasonable restraint of trade—in flat contradiction to what this court has said 15 years ago that Congress did not intend.

"If you will take the trouble to look through the Federal Reporter you will find that possibly nearly every Federal court in this country has accepted these original decisions as the final decision of this court as to the meaning of the act of Congress.

"Now we are asked to change the rule, and to say:

"'It may be true that, in the words of the statute, this contract, or this agreement, is in restraint of interstate trade. It may be. But it is a lawful restraint of trade.'

"Contrary to the decision of this court.

"I say contrary to the practice and usage of this court.

"CONTRARY TO FORMER DECISIONS.

"If I mistake not, more than once at this term a lawyer has been compelled to take his seat, to stop the particular line of argument that he was pursuing, because he was arguing against a former decision of this court on that very question. He was wanting to break down that former decision.

"While this happens to be a case of an overshadowing combination of such vast wealth and enormous power that it may fairly be deemed a menace to the general business interests of the country, this difference ought not to induce us to depart from a settled, wholesome rule, which, being faithfully observed, will guard the integrity and secure the safety of the Nation and of its institutions against the attacks of those who would undermine all law and who would, for the sake of present advantages and ends, be willing to undo the work of the fathers.

"Why do I say to undo the work of the fathers? If there is any feature in our governmental system that is new among the nations of the earth, it is that provision of the Federal Constitution which divides the departments of Government among three coordinate branches—legislative, executive, and judicial—and neither branch has the right to encroach upon the domain of the other.

"Practically the decision to-day—I do not mean the judgment—but parts of the opinion, are to the effect, practically, that the courts may, by mere judicial construction, amend the Constitution of the United States or an act of Congress. That, it strikes me, is mischievous, and that is the part of the opinion that I especially object to."

Mr. Speaker, the Republican and Democratic Parties have declared in favor of statehood for these Territories in all of their recent platforms, and it has been left for a Democratic House of Representatives and a combination of Democrats and insurgent Republicans in the Senate to compel the regular Republicans to permit the passage of the Flood statehood resolution at this session of Congress. The Sixty-first Congress—which had an overwhelming Republican majority—passed a bill making but one State out of the two Territories, thus violating their oft-repeated platform pledges and acting in bad faith with the people of these Territories, and had it not been for the determined Democratic opposition in Congress and the hard fight made against this outrage by the Democrats of Arizona these Territories would have been yoked together as one State. The Sixty-second Congress, still largely Republican, passed another enabling act, but broke faith with the people of these Territories by requiring Congress and the President to ratify the constitutions to be made by these people before they could be admitted as States, thus putting a string on their admission.

This was the first time that any Congress ever endeavored to force the people of a new State to enact only a constitution that would suit the purposes of the Republican politicians in Congress. The determined fight made by Senator OWEN and other Democrats in the Senate prevented the passage of this monstrous law.

The American people, at the national elections last year, for this and other outrages, repudiated the Republican Party and elected a Democratic House of Representatives, and they have, with insurgent aid in the Senate, put two new States into the Union despite the well-known opposition of the stand-pat Republicans and the veto of their President. Had the last election continued the Republican Party in power, statehood by this Congress would have again failed. The party that for political purposes has endeavored to put these two Territories into the Union as one State, thus giving this great scope of southern country only two United States Senators, was only playing politics. The same party for political purposes a few years ago divided the Territory of Dakota into two parts (North and South Dakota), and thus made two States out of one Territory and magnanimously gave themselves four United States Senators. The sectionalism, injustice, and unfairness of this old, repudiated, wealth and trust ridden party is well exemplified in making these two new Republican States out of one Territory in the northern part of the United States. I desire to call attention to the effort of this party to permit New Mexico to become a State with a constitution dictated by the attorneys for the railroads and trusts of that unfortunate and trust-ridden Territory. This entire matter is well voiced and truthfully stated in a recent editorial in the National Post. It is as follows:

THE MENACING CONSTITUTION OF NEW MEXICO.

While the very democratic constitution of Arizona, containing the initiative, referendum, and recall, has been heralded from one end of the country to the other as subversive of our institutions, scarcely a word of protest has been raised against the constitution of New Mexico, which places the people of that Territory in perpetual subjection to the corporate interests active in its framing. There is sufficient internal evidence in the constitution itself to convict the railroads and the other privileged corporations of the Territory with having copper riveted New Mexico as a perpetual patrimony under their control.

The result has been achieved by various subtle provisions in the constitution discovered by Senator ROBERT L. OWEN, which, read together, provide in effect:

(1) That the ballot shall be "open," which, according to judicial interpretation, appears to deny the introduction of the secret Australian ballot and limits elections to some "open" method of showing hands or viva voce voting.

(2) That any educational limitation on the suffrage is specifically and absolutely prohibited, which, taken in connection with the fact that one-quarter of the population of New Mexico is Mexican, speaks only Spanish, and is largely in the employ of the railroads and other interests, means that this class can be herded and voted as its employers dictate.

(3) That any amendment of the constitution is almost impossible, the requirement to change it in any respect being that a resolution must be passed by two succeeding sessions of the legislature and by a two-thirds vote of all the members elected to each house; that then the amendment must be submitted to the people and that for adoption it must receive a majority of all the votes cast at the election; and an affirmative vote of at least 40 per cent of all those voting at the election, and in at least one-half the counties in the State.

It is this latter provision that makes amendment impossible. Not more than 60 per cent of the electors commonly vote on constitutional questions, and in order that an amendment may carry it must secure two-thirds of all the votes cast on the resolution. With the large Mexican illiterate vote, the open ballot subject to oversight by the privileged interests, and with no corrupt-practices act, any amendment that privilege disapproves is out of the question.

Senator OWEN insists that this is not a matter affecting New Mexico alone; it affects the Nation. If New Mexico is to be controlled in perpetuity by privileged interests, the new State will send Members to the United States Senate subservient to their will. In order to meet this condition Senator OWEN has announced that he will offer a resolution providing that before New Mexico is admitted the people shall vote on amendments providing for a corrupt-practices act as well as for a provision enabling the legislature to propose any amendment within five years by a mere majority vote of the two houses, which amendments may be adopted by a majority vote of all those voting thereon, the election to be held under the secret ballot.

Mr. Speaker, the Flood resolution contains a provision requiring that the line between Texas and New Mexico as defined and as is now being established by a joint commission composed of Judge Scott, on the part of Texas, and ex-Senator Cockrell, on the part of the United States, and known as the old Clark line, shall be and remain the true line between New Mexico and Texas.

Mr. Speaker, New Mexico endeavored to repudiate the old Clark line in the new constitution, and had it been adopted, Texas would possibly have lost a considerable strip of territory on her western boundary. I have been fighting for 10 years to have the Clark boundary line recognized, and it was only in the last session of the last Congress that I secured the passage of my bill settling the vexed question in favor of Texas; and the provision of the Flood resolution I have mentioned will write into the constitution of New Mexico a provision recognizing the old Clark line as defined in the law I have just referred to.

Mr. Speaker, the whole country, and more especially the country west of the Mississippi River, is to be congratulated on the entry into the Union of these two new States. The addition of four new United States Senators and several Congressmen to the strength of the West will materially aid the development of that almost unknown southwestern country. I believe that of that almost unknown southwestern country. I believe that statehood will bring within their borders many thousands of miners, farmers, and ranchmen to develop the almost untouched wealth of these two Commonwealths. My own great State—Texas—will be greatly benefited by the rising and new tide of immigration and wealth that will be attracted to these new and sister States of the Southwest.

Eulogy on the late Hon. John W. Daniel.

MEMORIAL ADDRESS
OF
HON. JOHN H. SMALL,
OF NORTH CAROLINA,
IN THE HOUSE OF REPRESENTATIVES,
Saturday, June 24, 1911,

On House resolution 223:

"*Resolved*, That the business of the House be now suspended that opportunity may be given for the tribute to the memory of Hon. JOHN W. DANIEL, late a Senator from the State of Virginia.

"*Resolved*, That as a further mark of respect to the memory of the deceased, and in recognition of his eminent ability and illustrious public services, the House, at the conclusion of these memorial services, shall adjourn.

"*Resolved*, That the Clerk communicate these resolutions to the Senate.

"*Resolved*, That the Clerk be instructed to send a copy of these resolutions to the family of the deceased."

Mr. SMALL said:

Mr. SPEAKER: When we gather to pay tribute to the achievements and memory of a man, particularly one whose life was largely devoted to the public service, it is a happy reflection to feel that our admiration and love is universally shared by the people whom he directly served and by those of the whole country so fortunate as to claim personal acquaintance or familiarity with his career. Such a relation do we and others sustain toward the late JOHN W. DANIEL, the distinguished citizen and so long a Senator from the State of Virginia.

Some men command applause for their genius. Some compel admiration for their intellectual acumen, their persistence, and forcefulness; some for the material things they have wrought. Others by their high ideals and fine character exact our respect and consideration. But it is only given to the few to receive as a voluntary tribute the love and affection of a whole people, to possess their entire confidence and trust.

I shall not attempt even in a brief way to recount the achievements of this distinguished Virginian. As a soldier he offered the very flower of his youth to the service of the people of his State, and his life, if need be, was tendered as a willing sacrifice for a cause they both believed to be right. As a lawyer and law writer he brought to the service of this jealous mistress a goodly heritage of mental powers, which he developed by assiduous training until his learning and breadth of knowledge made him a peer among a galaxy of eminent lawyers. As an orator among a people where eloquence was indigenous and speech was tuned to music, his magnificent presence, his musical voice, his pure English, and his broad culture placed him in rank with the most eminent orators of the Old Dominion.

As a Senator he met the loftiest ideals in that great body and set the pace for distinguished service.

As a statesman and publicist he brought to the public service a trained mind, a store of knowledge, a grounding in the principles of government, and such sane and wholesome ideals of a democracy as to make him wise in counsel, forceful in debate, and a potent factor in shaping necessary and constructive legislation.

All these qualities and achievements have been described in these tributes in such terms and with such eloquence as I may not hope to emulate.

I shall content myself with a brief reference to some of those qualities which marked Senator DANIEL in his relations and intercourse with his kind. No man in this world can get the things worth having, whether it be wealth, station, or fame, without at the same time making himself a large debtor to this same world. The account must be reciprocal. This debt may be paid in various ways. Contributions may be made to those co-